

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

RAUL VASQUEZ,

Defendant.

* * * * *

Case No. 14-CR-316 (JBW)

Brooklyn, New York

August 26, 2014

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE STEVEN M. GOLD
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

PETER W. BALDWIN, ESQ.
Asst. United States Attorney
United States Attorney's Office
271 Cadman Plaza
Brooklyn, NY 11201

For the Defendant:

LEN H. KAMDANG, ESQ.
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1 (Proceedings commenced at 10:12 a.m.)

2 THE COURT: That means if you lie to me in this
3 courtroom today, the prosecutor could bring new criminal
4 charges against you just for that. Do you understand?

5 THE DEFENDANT: Yes.

6 THE COURT: Tell me your full name.

7 THE DEFENDANT: Raul Vasquez.

8 THE COURT: How old are you, Mr. Vasquez?

9 THE DEFENDANT: 52.

10 THE COURT: How far did you go in school?

11 THE DEFENDANT: Around eighth, ninth grade.

12 Around.

13 THE COURT: Was that in the United States?

14 THE DEFENDANT: Yes.

15 THE COURT: Is English your native language?

16 THE DEFENDANT: Spanish.

17 THE COURT: Do you feel fluent in English?

18 THE DEFENDANT: Somewhat. Yes.

19 THE COURT: Are you understanding me without any
20 problem?

21 THE DEFENDANT: Yes.

22 THE COURT: Would you be more comfortable if you
23 had a Spanish interpreter?

24 THE DEFENDANT: No.

25 THE COURT: Mr. Kamdang, have you had any

1 difficulty communicating with your client in the English
2 language?

3 MR. KAMDANG: No, Your Honor. I've had all of my
4 conversations with Mr. Vasquez in English and I believe that
5 language is not a concern here.

6 THE COURT: Thank you.

7 Mr. Vasquez, are you now or have you in the recent
8 past been seeing a doctor, psychologist or other health care
9 professional for any physical, mental or emotional problems?

10 (Pause.)

11 THE COURT: Are you getting any medical treatment
12 for any kind of physical, mental or emotional problems?

13 THE DEFENDANT: Yes.

14 THE COURT: What are you being treated for?

15 THE DEFENDANT: Now being treated?

16 THE COURT: Yes.

17 THE DEFENDANT: Now? Am I --

18 MR. KAMDANG: One moment, Your Honor.

19 (Counsel and the defendant confer.)

20 MR. KAMDANG: Your Honor, the confusion is Mr.
21 Vasquez is awaiting a referral from Pre-Trial Services for
22 therapy related to these charges.

23 THE COURT: I understand.

24 MR. KAMDANG: He hasn't received that referral yet,
25 so he's not receiving any medical treatment right now. He's

1 been evaluated and that report has been turned over to the
2 government and the Court, so to that extent he has recently
3 seen --

4 THE COURT: Okay.

5 MR. KAMDANG: -- a professional but he didn't start
6 the therapy yet.

7 THE COURT: Okay. So putting aside any mental
8 health treatment connected to the charges you're facing, have
9 you been receiving any medical care for any other problem
10 over the last couple of months?

11 THE DEFENDANT: No.

12 THE COURT: In the last 24 hours, have you taken
13 any narcotics, drugs, medicine, pills or alcohol?

14 THE DEFENDANT: No.

15 THE COURT: Have you ever been hospitalized or
16 treated for alcohol or drug abuse or psychiatric problems?

17 THE DEFENDANT: Many years ago.

18 THE COURT: What were you treated for?

19 THE DEFENDANT: Drugs.

20 THE COURT: Have you been sober and clean for at
21 least the last three or four months?

22 THE DEFENDANT: Yes.

23 THE COURT: Is your mind clear today?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you feel healthy, focused and alert?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand everything that's
3 happening in this courtroom so far?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. Mr. Kamdang, have you reviewed
6 the matter of pleading guilty carefully with your client?

7 MR. KAMDANG: Yes, Your Honor.

8 THE COURT: Does he understand the rights he'll be
9 waiving if he tenders a guilty plea?

10 MR. KAMDANG: Yes.

11 THE COURT: Is he capable of understanding the
12 nature of this proceeding?

13 MR. KAMDANG: Yes.

14 THE COURT: Do you have any doubt about his
15 competence to tender a guilty plea at this time?

16 MR. KAMDANG: No, Your Honor.

17 THE COURT: Have you alerted your client to the
18 maximum and I guess minimum sentence and fine that can be
19 imposed and discussed with him both the likely operation of
20 the sentencing guidelines as best you can anticipate it and
21 the anticipated collateral consequences of conviction?

22 MR. KAMDANG: Yes, Your Honor.

23 THE COURT: Mr. Vasquez, have you had enough time
24 to go over everything about your case with Mr. Kamdang?

25 THE DEFENDANT: Yes.

1 THE COURT: Have you actually sat down with him and
2 reviewed everything that's of concern to you?

3 THE DEFENDANT: Yes.

4 THE COURT: Are you satisfied to have Mr. Kamdang
5 be the criminal defense lawyer representing you?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you received a copy of the
8 indictment where the charges against you are set forth?

9 THE DEFENDANT: Yes.

10 THE COURT: Have you read that indictment and
11 reviewed it carefully with Mr. Kamdang?

12 THE DEFENDANT: Yes.

13 THE COURT: You are charged in that indictment with
14 various crimes involving child pornography. In Count 5 which
15 is the count that is the subject of your plea agreement, you
16 are accused of knowingly and intentionally possessing images
17 of child pornography on or about May 2nd, 2014 which images
18 were mailed, shipped or transported in interstate or foreign
19 commerce. Do you understand what you're accused of in
20 Count 5?

21 THE DEFENDANT: Yes.

22 THE COURT: You have a right to plead not guilty to
23 all of the charges in the indictment, whether you are guilty
24 of any of them or not. You also have the right to persist in
25 any not guilty plea you've previously entered in the case.

1 You have that right even if you committed these crimes. It's
2 never lying or misleading the Court to plead not guilty.
3 Every defendant has the right to plead not guilty. It is the
4 way a defendant exercises his Constitutional right to a
5 trial. Is this clear to you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: If you persist in your previously
8 entered not guilty pleas or plead not guilty today, then
9 under the Constitution and laws of the United States, you're
10 entitled to a speedy and public trial by jury with the
11 assistance of your attorney at all stages of the case, not
12 only at the trial and on all charges pending against you. Is
13 that clear?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: At your trial, you would be presumed to
16 be innocent. The prosecution would be required to overcome
17 this presumption of innocence and to prove that you were
18 guilty by competent evidence and beyond a reasonable doubt.
19 You would have no obligation to prove that you were innocent.

20 If the prosecution failed to prove that you were
21 guilty beyond a reasonable doubt, the members of the jury
22 would have the duty to return a verdict of not guilty and
23 acquit you, and Judge Weinstein would instruct them that way.
24 Is that clear to you?

25 THE DEFENDANT: Yes.

1 THE COURT: That's why sometimes juries return not
2 guilty verdicts that acquit the defendant, even when the
3 jurors believe he probably did commit the crimes of which
4 he's accused.

5 That's because when a jury finds a defendant not
6 guilty and acquits him, the jurors aren't necessarily saying,
7 we believe the defendant is innocent. They're only saying,
8 we're not convinced beyond a reasonable doubt of his guilt.
9 Do you understand that difference?

10 THE DEFENDANT: Yes.

11 THE COURT: If you proceeded to trial, the
12 prosecutor's witnesses would be required to come into the
13 courtroom and to present their testimony against you right in
14 front of you and your lawyer.

15 Your lawyer would have the right to question the
16 prosecution witnesses on cross-examination. Your lawyer
17 would have the right to raise objections to the evidence the
18 prosecution attempted to offer against you.

19 And you and your lawyer, working together, would
20 have the right to call witnesses, present evidence other than
21 testimony and make arguments to the jury in your defense
22 during the course of your trial. You could even issue
23 subpoenas that would compel people who might help your case
24 to come to court and testify.

25 Do you understand all of that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: At your trial, you yourself would have
3 the right to testify as a witness in your own defense if that
4 was the choice that you made. On the other hand, no one
5 could make you testify at your trial against your will.

6 That's because the Constitution of the United States
7 says that no one may be required to say anything that is
8 self-incriminating.

9 If you decided that you preferred not to testify as
10 a witness in your own defense, Judge Weinstein would instruct
11 the jurors that they could not take your silence at trial
12 into account or hold it against you in any way when they
13 decided what their verdict should be. Is this clear to you?

14 THE DEFENDANT: Yes.

15 THE COURT: On the other hand, if you offer a
16 guilty plea and Judge Weinstein accepts it, you will be
17 surrendering your Constitutional right to trial and all of
18 the other rights that I've been describing to you today.

19 There will be no further trial of any kind in your case.
20 You will have no right to appeal from the judgment of guilty
21 that will follow.

22 Judge Weinstein will essentially convict you, find
23 you guilty, based upon what you admit in my courtroom this
24 morning. That will free the prosecutor of any responsibility
25 to prove what you did. Is that clear to you?

1 THE DEFENDANT: Yes.

2 THE COURT: If you proceeded to trial and you were
3 convicted by the verdict of a jury, you would then have a
4 right to take an appeal from your conviction to a higher
5 court called the Court of Appeals and ask that the legality
6 of all of the proceedings leading up to your conviction be
7 reviewed.

8 But when you plead guilty, your conviction is based
9 upon what you yourself decided to say. And under that
10 circumstance, there's no right to appeal from the conviction
11 that follows. Is that clear?

12 THE DEFENDANT: Yes.

13 THE COURT: If you plead guilty, I'm going to have
14 to ask you questions about what you did and what you
15 understood about what you were doing so that Judge Weinstein
16 and I can be satisfied that your plea of guilty is based upon
17 facts that actually took place.

18 You don't have to answer those questions unless you
19 want to proceed with your guilty plea. If you do answer them
20 though, you will be surrendering your right not to say
21 anything self-incriminating. Is this clear to you?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you still want to give up your right
24 to trial and all the other rights I've been talking to you
25 about this morning?

1 THE DEFENDANT: Yes.

2 THE COURT: I understand you're making this
3 decision pursuant to a written plea agreement with the
4 prosecution. I've had that agreement marked as Court's
5 Exhibit 1 and I will ask my clerk to show it to you now.

6 (Pause.)

7 THE COURT: Directing your attention to Court
8 Exhibit 1, do you recognize this document and does your
9 signature appear on its last page?

10 THE DEFENDANT: Yes.

11 THE COURT: Before you signed it, did you read it?

12 THE DEFENDANT: Yes.

13 THE COURT: Are you able to read? I know you only
14 went to the eighth grade. That's why I'm asking you.

15 THE DEFENDANT: Yes.

16 THE COURT: And did you go over it very carefully
17 with Mr. Kamdang?

18 THE DEFENDANT: Yes, I did.

19 THE COURT: Did you understand what you signed?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you have any questions you would
22 like to ask me or go over with Mr. Kamdang in private about
23 anything in your plea agreement?

24 THE DEFENDANT: No.

25 THE COURT: Everything in it is clear to you?

1 THE DEFENDANT: Yes.

2 THE COURT: Does that written document, Court
3 Exhibit 1, your plea agreement, does that document contain a
4 complete and accurate statement of everything that you and
5 the prosecutor have agreed to about your case?

6 THE DEFENDANT: Yes.

7 THE COURT: Has anyone promised you anything --

8 THE DEFENDANT: No.

9 THE COURT: -- in return for pleading guilty --
10 well, they have, so don't say no so fast, right? You're
11 pleading guilty to one charge and you're not being prosecuted
12 on others. At least that much has been promised to you,
13 correct?

14 THE DEFENDANT: Yes.

15 THE COURT: So that's the kind of thing I mean.
16 Has anyone promised you anything that is not written down in
17 the agreement in return for your guilty plea?

18 THE DEFENDANT: No.

19 THE COURT: May I have it back, please, Mr.
20 Kamdang?

21 (Pause.)

22 THE COURT: Now Mr. Vasquez, as we've been
23 discussing, the plea agreement anticipates that you will wish
24 to plead guilty to Count 5 of the indictment where you're
25 charged with knowingly and intentionally possessing child

1 pornography on or about May 2nd, 2014. Do you have that
2 charge clearly in your mind?

3 THE DEFENDANT: Yes.

4 THE COURT: I need to review with you now the
5 penalties you will face if you go forward with a plea of
6 guilty to that charge. The sentence you could receive could
7 be as long as ten years of imprisonment. Is that clear?

8 THE DEFENDANT: Yes.

9 THE COURT: In addition to a term of imprisonment,
10 you are subject to a term of supervised release that must be
11 at least five years long and could be as long as the rest of
12 your life. Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: Let me ask the government. There's a
15 reference here to three years of incarceration for a
16 violation of supervised release. I understand that the
17 supervised release term in terms of its length is different
18 than that which would otherwise apply, but I could not find a
19 citation that indicates that the sanction for violation is
20 longer than would otherwise apply. Can you direct me to it,
21 please? Because for a ten-year felony, ordinarily it would
22 be a two-year term of incarceration.

23 MR. BALDWIN: You know, Your Honor, I can't at this
24 time and I apologize for that.

25 THE COURT: Do you know if it's correct as written,

1 or if it's inaccurate?

2 MR. BALDWIN: I don't, but if the Court has a copy
3 of the statute book, I can quickly take a look and see if
4 it's in the statute and if not, then the Court I'm sure is
5 likely correct, and it may just be a typographical error.
6 But I ask the Court's indulgence just for two minutes while I
7 look at the statute.

8 THE COURT: Mr. Kamdang, do you happen to know the
9 answer?

10 MR. KAMDANG: Your Honor, I haven't -- I haven't
11 looked at it in a while, but I seem to recall that it is --
12 the penalty was three years. But I can't -- I don't have the
13 code book. I'll join Mr. Baldwin.

14 THE COURT: It may well be in there. I, frankly,
15 was unfamiliar with the five-to-life provision, so I'm not
16 sure. I know that there is a harsher penalty for new
17 criminal conduct, but assuming non-criminal violation of
18 supervised release, is he subject up to two or up to three
19 years of incarceration?

20 (Pause.)

21 THE COURT: Citations in the plea agreement are
22 available to you there. That's how I found the -- I think it
23 was (k). I think it has the special provisions -- 3583(k).

24 MR. BALDWIN: Yes, Your Honor. And I -- you are
25 correct. There is no specific reference in that statute or

1 that particular subsection to an additional or to a lengthier
2 period of supervised release.

3 THE COURT: No -- to a lengthier period of
4 incarceration for violating supervised release in a non-
5 criminal matter. Right?

6 MR. BALDWIN: Excuse me, Your Honor. Yes. That's
7 correct.

8 THE COURT: Okay.

9 (Pause.)

10 THE COURT: I think the prudent thing to do under
11 the circumstances, if I may make the suggestion, I'll warn
12 him about three.

13 I'll ask counsel to follow up and submit a
14 stipulation before the date of sentencing amending the plea
15 agreement if my reading of the statute turns out to be
16 accurate, so that in this man's future no one mistakenly
17 incarcerates him for longer than the statute permits for
18 supervision release violation.

19 MR. BALDWIN: I think that seems prudent, Your
20 Honor, and I will coordinate with Mr. Kamdang. I'll get a
21 citation and we'll alert the Court if we find something that
22 does actually say that it's three years just so that
23 everybody's on the same page.

24 THE COURT: Thank you, counsel. All right. Now of
25 course I've completely lost my place, so I'm probably going

1 to have to travel some ground first that I've already
2 covered.

3 Mr. Vasquez, I'm sure that today is a serious
4 enough day in your life that a distraction over a legal
5 technicality is unwelcome. I apologize. Let me refocus your
6 attention on the penalties you face if you're convicted upon
7 your plea of guilty. The maximum term of imprisonment for
8 Count 5 is ten years. I've already told you that, right?

9 THE DEFENDANT: Yes.

10 THE COURT And you understand?

11 THE DEFENDANT: Yes.

12 THE COURT: You will then be subject to a term of
13 supervised release that will be at least five years long and
14 could be as long as the rest of your life.

15 Supervised release is a period of time -- five
16 years to life -- that won't even begin to run until you
17 finish serving whatever prison sentence Judge Weinstein
18 imposes upon you.

19 Once you finish your prison term, assuming you
20 receive one, you'll be released from physical custody --
21 you'll be released from prison -- but you won't really be at
22 liberty because you'll be subject to the rules of supervised
23 release.

24 The rules you'll have to follow while on supervised
25 release will be so many in number that I couldn't even list

1 them all for you today. They will include restrictions on
2 your right to travel freely, requirements that you regularly
3 report to a Probation Officer, you'll have to answer your
4 officer's questions honestly, you'll have to follow your
5 officer's instructions carefully, and you'll be prohibited
6 from committing any new crimes whatsoever. Given the nature
7 of your offense, I expect that there will be additional
8 requirements such as mental health treatment and places you
9 will and will not be allowed to go, and registration
10 requirements that may apply in your case as well.

11 If you break any supervised release rule, you could
12 be arrested, returned to court and sent back to prison on
13 this possession of child pornography charge, even though you
14 finished serving your original sentence because now you
15 violated your supervised release term.

16 If your violation involves new criminal activity,
17 you could be sent back to prison for up to five years. If
18 your violation is non-criminal, say you didn't report to your
19 Probation Officer, or you traveled someplace that your
20 Probation Officer didn't know about in advance, even though
21 you were supposed to tell him or her, then you could be still
22 be sent back to prison, but not for as long. It would either
23 be for two or three years.

24 That's the debate we've just been having, and that
25 will be clarified by the attorneys between now and the time

1 you're sentenced. I'm sorry that was so long. Did you stay
2 with me and understand everything I've said?

3 THE DEFENDANT: Yes.

4 THE COURT: In addition, you could be fined as much
5 as \$250,000. Is that clear?

6 THE DEFENDANT: Yes.

7 THE COURT: You will be required to pay
8 restitution.

9 (Pause.)

10 THE COURT: And an order compensating the victim of
11 your crime will be entered as part of your sentence in
12 requiring you to pay that amount. Is that clear?

13 THE DEFENDANT: Yes.

14 THE COURT: Your plea agreement requires you to
15 identify certain assets that have a value of more than
16 \$5,000. Is that clear?

17 THE DEFENDANT: Yes.

18 THE COURT: You will be required to make a \$100
19 special assessment payment at or about the time you're
20 sentenced. Is that clear?

21 THE DEFENDANT: Yes.

22 THE COURT: Did I already say you could be fined as
23 much as \$250,000? I think I did.

24 MR. KAMDANG: Yes, Your Honor.

25 THE COURT: You will be required to register as a

1 sex offender. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: And there'll be a lot of rules and
4 regulations you're going to have to follow. They change from
5 time to time. You'll have to keep up with them. Is that
6 clear to you?

7 THE DEFENDANT: Yes.

8 THE COURT: And there's a criminal forfeiture
9 provision in your agreement as well. I take it that's the
10 visual depiction contraband?

11 MR. BALDWIN: Yes, Your Honor.

12 THE COURT: So you'll have to surrender to the
13 government any additional images you have, which may include
14 devices that -- on which those images are stored. Do you
15 understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Is it the government's information that
18 Mr. Vasquez is a citizen of the United States?

19 MR. BALDWIN: It is, Your Honor.

20 THE COURT: Thank you. Now that we reviewed all of
21 the statutory penalties with Mr. Vasquez, I want to talk to
22 you about we call the Sentencing Commission Guidelines.

23 These guidelines will be calculated by Judge Weinstein
24 and they will provide him with a range of months within which
25 the law will urge an appropriate sentence for your case

1 should be set.

2 Have you had a chance to discuss these guidelines
3 with your lawyer and obtained his advise about how they're
4 likely to be applied to your case?

5 THE DEFENDANT: Yes.

6 THE COURT: Your plea agreement says that the
7 government has calculated your guideline range to be 57 to 71
8 months long. I'm assuming that the August 21st date has been
9 extended by stipulation?

10 MR. KAMDANG: Yes, Your Honor.

11 THE COURT: And that the defendant qualifies for
12 that additional reduction?

13 MR. BALDWIN: Yes, Your Honor. I have modified
14 that with just a notation in the plea agreement. I initialed
15 it. I'm not positive that defense counsel and the defendant
16 also initialed it.

17 THE COURT: Oh, you know what? I'm looking at my
18 copy because it had some notes. But yes. It appears
19 everybody's initialed it.

20 MR. BALDWIN: Thank you, Your Honor.

21 THE COURT: Okay. Are these yours? Maybe not.

22 MR. KAMDANG: I initialed. Mr. Vasquez did not.

23 THE COURT: All right.

24 MR. KAMDANG: If Your Honor --

25 THE COURT: Would you like Mr. Vasquez to initial

1 it as well? It couldn't hurt.

2 MR. KAMDANG: Why not, Your Honor?

3 THE COURT: Let's get him to do that. It's an
4 ounce of prevention.

5 (Pause.)

6 THE COURT: Thank you.

7 So as I was saying, Mr. Vasquez, the government has
8 calculated that guideline range to be 57 to 71 months long
9 and by the terms of your plea agreement, you have agreed not
10 to challenge that calculation. Are you with me so far?

11 THE DEFENDANT: Yes.

12 THE COURT: The final decision about what the
13 guideline range should be, though, is up to Judge Weinstein.
14 And the Judge is not going to make that calculation until he
15 receives something we call a Pre-Sentence Report and that
16 report hasn't even been written yet.

17 Once the report is ready, you and your lawyer and
18 the prosecutor will all be allowed to read it. You will then
19 have an opportunity to appear before Judge Weinstein.

20 At that time, you will have a chance to speak, as
21 will your attorney. You may then tell Judge Weinstein if
22 there is anything in the report that you think is inaccurate
23 and only then will Judge Weinstein make the final calculation
24 of the guideline range that applies to your case.

25 He may well decide that the right guideline range

1 is 57 to 71 months, as predicted by the prosecutor, but he
2 might also decide that an even longer or shorter guideline
3 range is the one that should apply to your case. Are you
4 with me so far?

5 THE DEFENDANT: Yes.

6 THE COURT: Even after the Judge calculates your
7 guidelines, he will be required under the Federal Criminal
8 Laws to look at additional factors concerning your case and
9 to take those into account before he decides upon the final
10 sentence. He may therefore decide to impose a sentence
11 either longer or shorter than the guidelines. Is that clear
12 to you?

13 THE DEFENDANT: Yes.

14 THE COURT: If you receive a prison sentence of 78
15 months or less, you will have no right to challenge any
16 aspect of your conviction or sentence.

17 Even if you are sentenced to prison for longer than
18 78 months, you will have no right to withdraw your guilty
19 plea or challenge your conviction on that basis. The only
20 right you would have under that circumstances would be to
21 raise a challenge to the length of the sentence that Judge
22 Weinstein imposed upon you. Is that clear?

23 THE DEFENDANT: Yes.

24 THE COURT: You may have heard of parole, a program
25 of early release from a prison sentence. But there's no

1 parole in federal court like this, only in some state courts
2 so you will not be released early from any prison sentence
3 Judge Weinstein imposes on parole. Is that clear to you?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you have any questions you would
6 like to ask me about the charges against you, the rights
7 you're being asked to surrender, the penalties you're facing,
8 the guidelines, or anything else concerning your case?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Would you like to discuss anything
11 privately with your lawyer?

12 THE DEFENDANT: No.

13 THE COURT: Is everything I've told you today
14 clear?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you ready to enter your plea?

17 THE DEFENDANT: Yes.

18 THE COURT: Mr. Kamdang, do you know of any reason
19 why your client should not tender the guilty plea anticipated
20 by his agreement?

21 MR. KAMDANG: No, Your Honor.

22 THE COURT: Mr. Vasquez, with respect to Count 5 of
23 the indictment in which you are accused with knowingly and
24 intentionally -- knowing and intentional possession of child
25 pornography on May 2nd, 2014, what did you do -- how do you

1 plead; guilty or not guilty?

2 THE DEFENDANT: Guilty.

3 THE COURT: Are you pleading guilty voluntarily and
4 of your own free will?

5 THE DEFENDANT: Yes.

6 THE COURT: Have you been threatened or forced to
7 make this guilty plea?

8 THE DEFENDANT: No.

9 THE COURT: Other than what's written in your
10 agreement with the prosecution, have you been promised
11 anything that's causing you to plead guilty?

12 THE DEFENDANT: No.

13 THE COURT: Have you been promised what sentence
14 Judge Weinstein's going to set?

15 THE DEFENDANT: Excuse me. Could you --

16 THE COURT: Did anybody promise you what particular
17 sentence you're going to get from Judge Weinstein?

18 THE DEFENDANT: No.

19 THE COURT: What did you do that makes you guilty
20 of this offense?

21 THE DEFENDANT: On or about May 2nd, I -- I
22 downloaded some -- knowingly downloaded some -- what do you
23 call it? Child pornography.

24 THE COURT: Okay. Where were you on May 2nd when
25 you did this?

1 THE DEFENDANT: Where was I?

2 THE COURT: Yes.

3 THE DEFENDANT: I was home.

4 THE COURT: Where do you live? What town?

5 THE DEFENDANT: In Brooklyn.

6 THE COURT: And when you say May 2nd, you're
7 talking about May 2nd, 2014? I mean, it was this year? This
8 past May? Not earlier than that? Or was it another year?

9 THE DEFENDANT: Yes.

10 THE COURT: I'm just asking if it was 2014 or not.

11 THE DEFENDANT: Yes.

12 THE COURT: Yes. So you were at home on May 2nd,
13 2014, right?

14 THE DEFENDANT: Yes.

15 THE COURT: Were you using a computer? Is that
16 when you say downloaded what you mean?

17 THE DEFENDANT: Yes. Yes.

18 THE COURT: And -- and while you -- you were on the
19 Internet?

20 THE DEFENDANT: Yes.

21 THE COURT: You were using the Internet? And you
22 visited a site where you found some images?

23 THE DEFENDANT: Right.

24 THE COURT: And you say these images were
25 downloaded by you?

1 THE DEFENDANT: Yes.

2 THE COURT: Were these images of child pornography?

3 THE DEFENDANT: Yes.

4 THE COURT: Did you know that they were child
5 pornography when you downloaded them?

6 THE DEFENDANT: Yes.

7 THE COURT: What would the government's proof be
8 that to satisfy the elements that the images were, in fact,
9 child pornography and that the interstate and foreign
10 commerce aspects of the statute have been met as well if the
11 case were to go to trial?

12 MR. BALDWIN: Your Honor, if the case were to go to
13 trial, the government would introduce both the computers and
14 other digital devices that were seized from the defendant's
15 possession pursuant to a search warrant that was issued prior
16 to May 2nd.

17 There would be testimony from a forensic analyst
18 with Homeland Security who would be able to testify about
19 locating the particular images on those digital devices as
20 well as how those digital device -- or how those images came
21 to be on the defendant's devices.

22 In addition, there -- the government would likely
23 simply show the images to the jury. The government believes
24 that the particular images at issue in this case, there would
25 be no need for expert testimony to show that they are, in

1 fact, minors so the government would simply show the images
2 to prove that the images are, in fact, children, and I think
3 that would be it, Your Honor.

4 THE COURT: What about the interstate commerce?

5 MR. BALDWIN: Your Honor, I believe under the law
6 the fact that the devices -- or that the images came from the
7 Internet would be sufficient to satisfy the interstate nexus
8 requirement.

9 However, if necessary, the government could also
10 show or bring in either one of two things, Your Honor.
11 Either bring in a witness who may know one of the victims
12 that is in an image saved on the defendant's devices who
13 could testify that, in fact, that victim had these images
14 taken in another state.

15 Alternatively, the government could show that the
16 devices used to produce the images traveled in interstate
17 commerce as well.

18 THE COURT: There's a reference here, I believe, to
19 the fact that the visual depiction is of an actual
20 individual. How would the government prove that and has
21 victim notification been made?

22 MR. BALDWIN: Your Honor, with respect to your --
23 the second part of your question on victim notification, the
24 case agent has notified NCMEC, or the Center for Missing and
25 Exploited Children, and is in the process of trying to match

1 any images that were found on the device to known images. Of
2 course, the government will follow the requirements under the
3 law regarding victim notification if and when any known
4 victims are identified.

5 With respect to real children, to the extent that
6 there is a match to a real child, the government could
7 obviously satisfy the requirement of the real child by,
8 again, bringing in a witness who knew the child or
9 interviewed the child that is depicted in the image.

10 To the extent there are no known children, the
11 government could also call an expert to be able to testify
12 that the images that are saved on this device in question are
13 not digitally made -- in fact, do depict live human
14 individuals.

15 THE COURT: Now I haven't taken any pleas under
16 this statute. Is it appropriate to have the precise nature
17 of the video and how it's -- and the activity that takes
18 place on it spread on the record so that the defendant
19 acknowledges that?

20 MR. BALDWIN: Your Honor, I don't know that it's
21 necessary.

22 However, as we have -- as the government has in
23 Count 5 specifically charged that certain of the images
24 involved pre-pubescent or --

25 THE COURT: Uh-huh.

1 MR. BALDWIN: -- individuals who have not attained
2 the age of 12, I would prefer that it be on the record.

3 However, if the defendant's not prepared to --

4 THE COURT: Well, have you seen the video?

5 MR. BALDWIN: I have not, but I have had it on
6 representation from the case agent who has viewed all --

7 THE COURT: So why don't you describe what's seen
8 on the video?

9 MR. BALDWIN: Certainly, Your Honor. If I could
10 just have --

11 THE COURT: Take a moment.

12 MR. BALDWIN: -- make a reference here. There are
13 several videos and images that are on the device that has
14 been charged, a thumb drive, Your Honor. I can show or just
15 describe one or two of them.

16 THE COURT: That would be fine.

17 MR. BALDWIN: And again, this is based on
18 representations made to me by the case agent and also made
19 under oath in the affidavit of the search warrant and the
20 complaint in this case.

21 There is a picture on the device showing a pre-
22 pubescent girl exposing her vagina and buttocks to the camera
23 and an adult male is seen penetrating the girl's anus.

24 There is a video of approximately one minute and 17
25 seconds depicting an adult male penetrating a nude pre-

1 pubescent girl's vagina and the girl later performs oral sex
2 on the adult male. I believe that's probably sufficient,
3 Your Honor.

4 THE COURT: Yes. One other question, at least that
5 I could think of right now. I believe you said that the
6 agents executed a search warrant that was issued before
7 May 2nd, 2014. Of course the count charges May 2nd, 2014.

8 Was the search warrant executed before May 2nd,
9 2014?

10 MR. BALDWIN: It was executed on May 2nd. I
11 believe the search warrant was signed on May 1st, Your Honor.

12 THE COURT: Okay. Hence, the date in Count 5?

13 MR. BALDWIN: Yes, Your Honor.

14 THE COURT: Thank you. Mr. Vasquez, did you hear
15 and follow everything the prosecutor just told me?

16 THE DEFENDANT: Yes.

17 THE COURT: Did you, in fact -- did you view the
18 images that you downloaded?

19 THE DEFENDANT: Yes.

20 THE COURT: Did you look at them? Did the
21 prosecutor accurately describe what some of the images
22 showed?

23 THE DEFENDANT: Yes.

24 THE COURT: Was it your intention to download
25 images of that type?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you -- you knew what you were
3 downloading?

4 THE DEFENDANT: Yes.

5 THE COURT: Anything further?

6 MR. BALDWIN: No, I think that's sufficient, Your
7 Honor.

8 THE COURT: Based on the information given to me, I
9 find that the defendant, Raul Vasquez, is acting voluntarily
10 and that he fully understands his rights and the consequences
11 of his plea. I further find that his plea has a factual
12 basis. I therefore recommend that Judge Weinstein accepts
13 the defendant's plea of guilty to Count 5.

14 I have a sentencing date from Judge Weinstein's
15 chambers of December 10th at 10 a.m. Mr. Vasquez, between
16 now and December 10th, you're going to be interviewed by a
17 Probation Officer. The reason for the interview will be to
18 help that officer prepare that pre-sentence report I told you
19 about earlier this morning.

20 It's therefore very important that you come to that
21 meeting prepared to be candid and forthcoming so that the
22 report is as complete and accurate as possible. Is there
23 anything further for my attention?

24 MR. BALDWIN: No.

25 THE COURT: Bail continued?

1 MR. BALDWIN: Yes, Your Honor.

2 THE COURT: So ordered. Have a good day,
3 everybody.

4 MR. BALDWIN: Thank you, Your Honor.

5 MR. KAMDANG: Thank you, Your Honor.

6 THE COURT: I have paperwork here.

7 (Proceedings concluded at 10:46 a.m.)

8 I, CHRISTINE FIORE, court-approved transcriber and
9 certified electronic reporter and transcriber, certify that
10 the foregoing is a correct transcript from the official
11 electronic sound recording of the proceedings in the above-
12 entitled matter.

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15 _____ September 20, 2014

16 Christine Fiore, CERT
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